IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTYSIXTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 7161of 1996

Between:

V.Rajyalakshmi w/o Sri V.S.Sharma,

Aged 39 years, R/o 36-32, Defence

Colony, Ramakrishnapuram,

Secunderabad.

..... PETITIONER

AND

1. Andhra Pradesh Agricultural

University, Rajendranagar,

Hyderabad, represented by its

Registrar.

2. Comptroller, A.P. Agricultural

University, Administrative Office,

Rajendranagar, Hyderabad – 500 030

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Certiorari or any other appropriate Writ, order or direction calling for the records relating to the proceedings No. 103/OP/A4/96, dated 20.1.1996 and quash the same.

For the Petitioner: Mr. G. Ramachandra Rao, Advocate,

For the Respondents: Mr. B. Siva Reddy, Standing Counsel for A.P. Agricultural University.

The Court Made the Following

:ORAL ORDER:

The petitioner, an Assistant Engineer in the Engineering Division of the Andhra Pradesh Agricultural University (1st respondent University) at the institution of the writ petition, was initially appointed as a Supervisor by proceedings dated 15.9.1978 whereat she joined duty on 21.9.1978. On 7.5.79 she was kept incharge of the post of Technical Assistant on account of a casual vacancy that had arisen.

On allegations of negligence in verification of the comparative statement in respect of tenders for construction of Hostel Building in two blocks for men at the Rajendranagar Campus of the respondent-University, a disciplinary enquiry of sorts was held. By the impugned order dated 20.1.1996 the 2nd respondent who was officiating as the Registrar communicated the decision of the Board of Management of the respondent-University dated 25.11.1995, imposing on the petitioner the penalty of recovery of pecuniary loss of Rs.29,367/- and stoppage two increments without cumulative effect.

The impugned order is assailed on a variety of grounds including that

the documents sought by the petitioner were not furnished to her; the officer who was on the Tender Committee acted as the preliminary enquiry officer, conducted the regular enquiry and also communicated the penalty order while acting as officiating/incharge Registrar of the respondent-University. It is also alleged that the impugned order is vitiated as the enquiry officer recommended the penalty that should be imposed on the petitioner. The petitioner also alleges that despite a report of the Local Fund Audit in the year 1980-81 pointing out the corrections made to the original tender form and that excess amount was paid to the contractor, the respondent-University did not take any action to stop further payments to the contractor and was content with making all the payments. Although there were adequate powers under the terms of agreement between the contractor and the University either to stop further payment or recover the alleged excess payment made, the University failed to exercise those powers available under the agreement and therefore failed to mitigate the damage, if any, caused on account of the petitioner's alleged negligence, is a further contention urged on behalf of the petitioner. As the original of the comparative statement is not available, there was no material evidence in respect of the charge and therefore the impugned order is invalid, is also the contention.

The disciplinary enquiry leading to the issuance of the impugned order tellingly illustrates the incompetence of the respondent-University to conduct a disciplinary enquiry. For a very simple charge of negligence in verification prior to authenticating a comparative assessment, the enquiry was proceeded with fits and bounds over a meandering length of 14 years commencing some time in the year 1982 and culminating in the impugned order dated 20.1.1996. The procedure followed for conducting the enquiry was also unique – an enquiry officer was first appointed on the basis of a pseudonymous petition alleging alterations in the rates of certain items of works in respect of concluded agreements relating to three of the works of the respondent-University. The enquiry officer was appointed in June 1982 to enquire into the allegations contained in the pseudonymous

petition. Commencing from this stage the enquiry officer himself conducted a preliminary enquiry. He obtained material from the office of the Controller and other offices, examined some contractors apart from some of the employees, identified and conceptualised the misconduct involved and identified the various employees involved in the various degrees of misconduct and thereafter took up a regular enquiry after issuing charge sheet to the officers so identified by himself in the preliminary enquiry. In so far as the petitioner is concerned a charge memo was issued on 16.3.1984 and she was examined on 7.1.1985. Neither before that date nor later was the petitioner at all informed as to the conduct of any enquiry and no document or oral evidence was recorded in her presence or after notice to her. This is the specific allegation of the petitioner to which there is no demurral by the respondent-University.

The enquiry report of the 2nd respondent recorded that the original of the comparative statement was not available. The charge against the petitioner is that she failed to ensure the accuracy of the rates contained in the agreement schedule with reference to the rates noted in the original tenders – vide charge memo dated 16.3.84. The factual basis for this charge is that the petitioner had verified the agreement schedule in respect of the tender of one P.Narasimha and attested the same. The rates quoted by the contractor were higher than the original rates approved by the Tender Committee but were in exact conformity with the altered rates purported to be the approved rates. The altered rates in the comparative statement are the product of corrections of the approved rates which are in typed characters by corrections in ink. The charge against the petitioner is that she should have noticed the discrepancy in the tender schedule during the process of verification and should have pointed out the corrections and over-writings for appropriate orders or action of the university Engineer. The allegation against the petitioner is thus simply one of negligence but not of any mala-animus. In the context of the charge the original of the comparative statement where the interpolations are alleged to have been made, is a significant and crucial piece of

documentary evidence. As per the 2nd respondent's enquiry report, the original comparative statement is not available and it appears from the enquiry report that it was not available even at the time of the preliminary enquiry. In the absence of this document, merely on the basis of the fact that the contract agreement showed the approved rates at a higher value than the approved rates as finalised by the Tender Committee, would not lead to a legal inference that there were interpolations in the comparative statement which were overlooked negligently by the petitioner. Even in a departmental enquiry there are some minimal standards of proof and the conclusions in departmental enquiry cannot be arrived at on the basis of either fertile imagination, conjectures or surmises. A minimal forensic discipline is necessary to arrive at a conclusion of guilt even in a departmental enquiry where the sanctions reach out to the career prospects of a public servant.

The regular enquiry against the petitioner is also seen to have been conducted by an officer who himself conducted the preliminary enquiry and has during the process of such preliminary enquiry himself identified and conceptualised the misconduct involved in the engineering works of the respondent-University and also identified the employees of the university who, in his view, were responsible for the various degrees of misconduct. With such a pre-determined frame of mind, the 2nd respondent was disqualified from functioning as a regular enquiry officer. It is the conclusion of such non-neutral mind that formed the substratum of the decision of the Board of Management to impose the penalty on the petitioner. Even the minimal quality of neutrality required in a departmental proceeding is awfully lacking in the case on hand. As a consequence of this infirmity the disciplinary enquiry conducted by the 2nd respondent cannot be sustained. It is stricken with the vice of a reasonable apprehension of bias on the part of the enquiry officer.

In view of the fact that this court has come to the conclusion that the impugned order is vitiated on account of the bias of the enquiry officer

who himself acted as a preliminary enquiry officer and has in such status, identified employees responsible for the misconduct including of the petitioner, it is not necessary to adjudicate upon whether the impugned order is also invalid on the basis of the other infirmities urged on behalf of the petitioner.

For the reasons above, the impugned order of the respondent-University dated 20.01.1996 is quashed. Any incremental benefits of the petitioner withheld pursuant to the impugned order shall now be released in her favour forthwith as also any amounts recovered from her pursuant to the order of recovery contained in the impugned order. The writ petition is allowed. In the circumstances however there shall be no order as to costs.

Date: 26.08.2004 ----------

Pvsn Justice G.Raghuram

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday the Twenty sixth day of August Two thousand and four.

To

1. The Registrar, Andhra Pradesh Agricultural

University, Rajendranagar,

Hyderabad.

2. Comptroller, A.P. Agricultural

University, Administrative Office,

Rajendranagar, Hyderabad – 500 030

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